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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 45*

THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

REPLY BRIEF FOR THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, ET AL., APPELLANTS IN NO. 45.

HAROLD E. SPENCER,
ROBERT H. BIERMA,
HARRY E. BOE,
CHARLES CLARK,
FRANK H. COLE, JR.,
LEO P. DAY,
JAMES A. GILLEN,
ROLAND J. LEHMAN,
Y. D. LOTT, JR.,
DAVID O. MATHEWS,
JOHN E. MCCULLOUGH,
TOLL R. WARE,
Counsel for Appellants.

* Together with No. 46, *Galveston Chamber of Commerce and Houston Port and Traffic Bureau, Appellants* v. *United States, et al.*, No. 47, *Railroad Commission of Texas, Appellant* v. *United States, et al.*, and No. 48, *Savannah Sugar Refining Corporation, Appellant* v. *United States, et al.*, also on appeals from the same Court.

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I.

The Interpretation Placed on the Order by the United States and the Interstate Commerce Commission Is at Variance With the Terms of the Order.

The United States and the Commission undoubtedly realize that the Commission had no legal basis for prescribing differentials in this case, for they now put forth

* Together with No. 46, *Galveston Chamber of Commerce and Houston Port and Traffic Bureau, Appellants* v. *United States, et al.*, No. 47, *Railroad Commission of Texas, Appellant* v. *United States, et al.*, and No. 48, *Savannah Sugar Refining Corporation, Appellant* v. *United States, et al.*, also on appeals from the same Court.

the curious argument that all the Commission was doing was establishing rates based on differentials but that appellants are not required to maintain the differentials. Appellees' contention is inconsistent with the meaning commonly ascribed to the term "differentials" utilized by Congress in section 307 (d) of the act. No purpose would have been served by utilization of the term "differentials" if the railroads were to be left free to eliminate them. If the appellees are correct in their contention, the Commission, in prescribing differentials, has performed an utterly futile act.

The brief states (p. 24):

> "Moreover, the differentials prescribed by the Commission are *fixed, i.e.*, any changes made in the all-rail rates would not automatically change the rail-barge rates. Although this order is based upon the present level of rail rates, it does not require the rail carriers to maintain that level."

And, again, on page 35, it is stated:

> "* * * the order has no direct operation on all-rail rates, and therefore does not prevent the railroads from protecting their competitive position by seeking to lower such rates * * *."

Of course, the order does not require appellants to maintain the present level of all-rail rates, but appellants interpret the order as requiring the maintenance of differentials. The order (R. 15) requires the carriers

> "* * * to establish * * * and thereafter to maintain and apply to the transportation of property over the through routes referred to in the next preceding paragraph the joint rates prescribed in the said reports based upon the differentials found in the said reports to be justified."

This is a very important point, and there should be no doubt left as to the meaning of the order. Appellants do

not believe that counsel for the United States and the Commission have the right to bind the Commission to an interpretation of the order such as is here urged, which seems so at variance with the plain terms of the order. If the Commission interprets the order as not requiring the maintenance of the differentials but as permitting the appellants to meet the barge-rail rates, that fact should be made known to the Court by the Commission either formally or informally, but on the specific authority of the Commission.

If the interpretation suggested by counsel for the United States and the Commission is correct, certain portions of our argument relating to differentials are inapplicable. There would still remain, however, the extremely important point whether the joint rates are just and reasonable. The Commission did not so find.

II.

The Commission's Findings Do Not Support Appellees' Contention That the Order Was Not Based on Congressional Policy But Was Based Upon the Applicable Statutory Standards.

The appellees do not seriously question appellants' contention that an order of the Commission cannot be based on congressional policy, nor do they deny that the policy of Congress is to accord to all modes of transportation fair and impartial regulation so administered as to recognize and preserve the inherent advantages of each. Instead, they defend the order on the ground that it was not based on congressional policy. This argument must fall because there are no findings in the Commission's report to indicate any basis for the order except the supposed policy of Congress.

This is a basic issue which can be decided by the Court only after an inspection of the Commission's report. Appellants submit that such an inspection will show that the contention that the order is based on congressional policy is not a strained and unnatural construction of the report, as the barge-line appellees allege (Br., p. 23), but is merely a recognition of what the Commission itself said was the basis for its order. There are no findings in the report to indicate that the Commission was attempting to determine the reasonableness and lawfulness of the joint rates and differentials according to the transportation standards of the Interstate Commerce Act. Repeated assertions of appellees that the order was based on applicable statutory standards do not, of course, take the place of the missing findings.

Appellants do not ask that the Commission make formal findings of fact, that it specify the weight given to any item of evidence or disclose the mental operations by which its decision was reached. All appellants ask is that the Commission make clear that it was acting in accordance with the proper legal theory and that it had a rational basis in fact for its order.

This Court has never regarded the language of section 14(1) of the act, relied on by the barge-line appellees (Br., p. 39), as relieving the Commission of the necessity of making such findings of the basic facts as will show that the Commission was not acting arbitrarily but that it had a rational basis for its order.

Throughout the brief of the United States and the Commission, reference is made to the "statutory standards" as if only Part III of the Interstate Commerce Act were involved. But this court made it quite clear in *Interstate Commerce Commission* v. *Mechling*, 330 U. S. 567, 574-577, that section 307(d) of the act was subject to the specific limiting standards of other applicable sections of

the Interstate Commerce Act. It is plain from the decision of this court that the provisions of Part I of the act are to be considered along with those of Part III of the act. Furthermore, by section 1(1) of the act, the joint rates are subject to the provisions of Part I of the act. Under sections 1(4) and 1(5)(a), they are required to be just and reasonable. They must not be unduly preferential or prejudicial under section 3(1). Under section 15a(2) the Commission is required to take into consideration various factors in the exercise of its power to prescribe just and reasonable rates. The brief does not discuss these "statutory standards."

The United States and the Commission rely (Br., p. 29) on the provisions of Part III of the act to establish the thesis that Congress did not intend that "voluntary rates of water carriers should be tested for validity against corresponding rail rates." No one here contends that they should. This case does not involve the voluntary rates of the water carriers. It involves prescribed joint barge-rail rates and prescribed differentials between those rates and the all-rail rates.

To say that, when the Commission fixes differentials between competing carriers, it shall consider the effect on only one of them does not make sense. Section 15a(2) of the act says that, when the Commission prescribes rates, it shall consider, among other factors, "the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed." The prescription of differentials between carriers fixes a relationship between the carriers and defines the terms upon which they may compete, just as effectively as if the rates had been specifically prescribed for each of them. No warrant in law or reason can be found for saying that the Commission should give no consideration to the effect of the differentials on the traffic of the rail carriers.

The discussion of the "statutory standards" in the brief of the United States and the Commission arrives at the conclusion that the Commission must "preserve the ability of water carriers to charge low rates," for which *Interstate Commerce Commission* v. *Mechling*, 330 U. S. 567, is cited as authority. If the ability of the water carriers to charge low rates does not depend on their operating cost, upon what does it depend?

That was made very clear by this Court in the *Mechling* case when it said:

> "Although barge lines were much slower than railroads, they were less expensive to operate and therefore could afford to transport freight much more cheaply than railroads." 330 U. S. at 570.

The issue is thus very simple. If, with respect to this particular traffic, the barge-rail routes are "less expensive to operate" and can afford to transport traffic "much more cheaply than railroads," they are entitled to differentials. If they are not, they are not entitled to differentials simply because their service is inferior.

III.

The Argument of the United States and the Commission Is Based Upon an Assumption That the Joint Barge-Rail Rates Are Compensatory and Reasonable, Which Is Not Supported by the Commission's Findings.

The entire argument of the United States and the Commission is based upon the assumption that the joint barge-rail rates are compensatory and reasonable and that appellants, to protect all-rail traffic, are trying to force the joint rates above a reasonable level. Examples of this

philosophy are shown below.* This argument, which is a flagrant misstatement of appellants' contentions, is based upon an assumption of fact which cannot be supported by the Commission's findings.

The brief states (p. 42):

> "The Commission established the joint rate schedule on the premise that if the barge lines perform the service involved in the barge leg of the proposed rail-barge routes at rates based upon the prescribed differentials, the compensation received will cover their costs and yield a return on investment."

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* "And there is no basis in law for the contention that barge rates must be kept artificially high to protect railroads from competition." (p. 19)

"The railroad-appellants seek to establish the principle that, as a matter of law, they are entitled to protection, under the guise of preservation of 'inherent advantages,' from the legitimate competition of barge lines." (p. 25)

"Appellants, in attacking those differentials, are seeking to have water rates established which are higher than the 'lowest cost' to the public consistent with the furnishing of efficient water service." (p. 29)

'The Commission rightly refused to interpret its duty to maintain the 'inherent advantages' of rail carriers as an obligation to maintain barge rates at an artificially high level and thus, by relieving the railroads of effective competition, to bring rail-barge traffic to an end." (p. 33)

"The right of a mode of transportation to have its 'inherent advantages' preserved is not a right to be free from reasonable rate competition from other modes of transportation. If barge rates are set at compensatory levels, as they have been here, the remedy for the railroads in order to meet such competition would appear to be to improve their service or lower their rates, or both—and not, as appears to be the case here, to seek to compel their competitors to raise *their* rates." (p. 43)

"The Commission has in effect followed the rule that if an inferior service believes it can profitably operate at rates lower than those charged for the superior service, the inferior service should be permitted the opportunity to do so." (p. 44)

"With this contention we agree, but we disagree with the contention that to preserve the inherent advantages of the low-cost carriers—whether rail or water—the Commission is required to compel competing carriers to maintain artificially high rates." (pp. 45-6)

One of the issues in the proceeding before the Commission was the reasonableness of the prescribed joint rates (R. 79-80). It is axiomatic that when a question is raised as to whether a rate is below a reasonable level, the Commission must first find that the assailed rate is reasonably compensatory before the rate under attack can be approved. One of the great purposes of the Interstate Commerce Act was to prevent destructive competition and this concept is carried into the national transportation policy. The cases are legion where rates proposed by carriers have been condemned because they were found to be non-compensatory and the Commission must observe the same standard when it prescribes rates. "Obviously, what the carrier may not lawfully do, the Commission may not compel." *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, 637. Appellants here claim that the failure of the Commission to find that the prescribed rates would be just and reasonable vitiates the order. Appellees have no right to state as a fact that the Commission established the rates on the premise that the compensation received by the barge lines will cover their costs and yield a return on investment. The Commission made no such finding.

The brief also states (pp. 28-9):

> "The differentials here prescribed were carefully designed to produce a return to the barge lines sufficient to cover costs, and a return on investment. As previously stated (pp. 15-16), the differentials fixed by the Commission were substantially as proposed by the barge lines, and have not been challenged by them at any stage of this proceeding."

This statement is misleading for appellees are well aware of the fact that Valley contends the joint rates are "confiscatory" as to it in a proceeding currently before the Commission in Docket 30118, *New Orleans Traffic and Transportation Bureau* v. *Mississippi Valley Barge Line*

Company, a complaint filed by one of the other appellees attacking the validity of Valley's embargoes in this traffic.*

The dilemma in which Valley finds itself is referred to in guarded language in footnote 6 of the barge-line appellees' brief (pp. 8-9), where the following statement is made:

> "In the Commission's report dated July 7, 1948, (R. 35) and in the brief filed by appellant in No. 47 in opposition to the motion to affirm reference is made to an embargo declared by Mississippi Valley Barge Line Company against the handling of merchandise traffic in less-than-bargeload quantities. It is true that due to rising costs of labor, material and supplies since the decisions of the Commission in July, 1948, the Mississippi Valley Barge Line Company found it impossible to operate except at a substantial loss and that in order to abate such losses it declared said embargo in October, 1948. If and when the Mississippi Valley Barge Line Company is called upon under the contested order to reestablish service on basis of the prescribed differentials it may find it necessary to petition the Commission for modification of the differential plan or for a temporary stay of the effectiveness of its order. In the present posture of the proceeding it is important only to remember that

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* No decision has been rendered by the Commission in the case. It was orally argued before the Commission (Division 3) October 19, 1950, at which time the following statement was made by Mr. Harry C. Ames, counsel for Valley, at page 601 of the record in that proceeding:

"Now, they talk about 26712. We fought that case from 1934 to date—sixteen years; and next month we will be over in the Supreme Court, helping the Commission to defend its order.

"As a matter of principle, we say the Commission had the power to enter that order, on the evidence.

"But if the Supreme Court sustains that order, we are going to have to come to you and ask you to modify or cancel out its effectiveness as applied to us, because we will still be operating at confiscatory rates, and we do not think that you, or anybody else, can make us do that—to be perfectly frank with you."

neither of those circumstances has the slightest bearing upon the questions of law which the reviewing court must decide."

The briefs of appellees attempt to leave the inference that the rates have become confiscatory since the decision of the Commission in 1948. Appellants have no doubt that, since 1948, the relative positions of the all-rail and the barge-rail routes have been further substantially altered to the disadvantage of the barge-rail routes, a fact which, as appellees say, is of no concern in this proceeding. But appellants again call the attention of the Court to the fact that, on the argument of this proceeding before the Commission on March 10, 1948, counsel for Valley informed the Commission that Valley was incurring heavy losses on this merchandise traffic and that, to stop such losses, Valley embargoed a substantial portion of the traffic (R. 340-1). In its report, the Commission referred to the embargoes which had been laid by Valley (R. 35-6, 44). The Commission also referred to the testimony of the president of the Federal Barge Lines, before a subcommittee of the House of Representatives, in April, 1947, in which he called attention to the high costs of terminal handling and stated that, under such conditions as existed in 1946, package freight could not be handled at a profit (R. 34). Federal's president also said that the private lines had also encountered the problem of rising terminal costs and did not want most types of merchandise freight because of the high cost of handling it under present terminal methods (R. 35).

It is submitted that the Commission did not believe and could not have believed, when it issued its order, that the joint rates were compensatory and reasonable by the usual transportation standards. Its order was obviously based on other grounds. Appellees' argument only emphasizes how important it is that the Commission be required to

make the necessary findings. Without the vital finding showing the reasonableness of the rates, this order cannot be upheld.

IV.

No Legal Basis Is Shown for the Fixing of Differentials in This Case.

The first requisite for the validity of this order, a finding that the rates will be just and reasonable, is missing here, as has been shown. But if appellants' interpretation of the order as one requiring the maintenance of differentials between all-rail and barge-rail rates is correct, something more is also required. There must be some legal basis to justify the Commission's preventing the appellants from meeting the rates of their competitors. Even if the barge-rail rates were just and reasonable, the Commission could not establish differentials between them and all-rail rates unless it were shown that the all-rail rates were minimum reasonable rates or that some specific violation of the Interstate Commerce Act would result if the all-rail rates were reduced to meet competition. The Commission has no power to allocate traffic on an arbitrary basis.

Appellees do not make any real attempt to deal with this question. The whole argument of the United States and the Commission is on the assumption that the order does not require the maintenance of differentials. They also impute to appellants arguments which appellants have not made.

The brief for the United States and the Commission states (p. 38):

> "Baldly stated, the relative costs argument is that rates for an inferior service must equal rates for a superior service unless the transportation costs of the

> inferior service are lower. In other words, a service is to be priced in total disregard of its value to the consumer; and the consumer must pay just as much for an inferior as for a superior service, simply because there is no showing that it costs less to furnish the inferior service."

That is not appellants' contention and never has been. Appellants do not contend that rates for an inferior service must necessarily equal rates for a superior service unless transportation costs of the inferior service are lower. We do not contend that a service is to be priced in total disregard of its value to the consumer. We do not contend that the consumer must pay just as much for an inferior service as for a superior service simply because there is no showing that it costs less to furnish the inferior service. Furthermore, we do not contend that costs are the sole determinative factor in rate-making, that either the all-rail or barge-rail rates must be based entirely on costs or that the differentials must accurately reflect costs.

Appellants contend that the Commission has no power to prevent a superior service from meeting the rates of an inferior service if it wishes to do so, unless the inferior service can be provided at a lower cost.

Assuming that he can do so at just and reasonable rates, it is perfectly proper for the operator of an inferior service to sell that service for less if he is willing to accept less than the operator of a superior service, even though his service may not be less expensive to furnish. What appellants contend is that the Commission has no power to establish a differential between the rates of the two services to prevent the superior service from meeting its competition unless the inferior service can be furnished at lower cost. There is a vast difference between what carriers may do voluntarily and what the Commission may compel them to do.

Appellants have no objection to the consideration of value of service and all other proper factors in the determination of the measure of such differentials as are justified by economy of service. When no such economy is present, however, the fixing of differentials between competing modes of transportation solely on the basis of the value of their respective services is not only wrong in principle but is a mockery of the national transportation policy. The whole philosophy of the national transportation policy is by fair and impartial regulation to encourage, rather than penalize, economy and efficiency of operation.

As noted in our brief, pp. 37-38, 44-49, the Commission, in prescribing barge-rail rates differentially lower than all-rail rates, has always proceeded on the assumption that barge-rail costs are lower than all-rail costs. That assumption has been assailed in this case. The legislative history of the Transportation Act of 1940 clearly shows that Congress was interested in preserving, for the benefit of shippers, such rates of the water carriers as were justified by the lower costs of the water carriers. Only after a finding based on substantial evidence that barge-rail costs are lower than all-rail costs is it proper to take into consideration such other factors as are necessary to induce the movement of traffic by the slower, inferior barge-rail service. Cf. *Interstate Commerce Commission* v. *Mechling*, 330 U. S. 567. Only where the Commission finds that barge-rail costs justify barge-rail rates lower than all-rail rates found to be minimum reasonable rates may the Commission prevent the rail lines from meeting the barge-rail competition. But that is not this case.

The barge-line appellees say (Br., p. 37) that the terms "reasonable" and "justified" in section 307(d) of the act mean the same there as they do in other sections of the act. That is exactly our contention. In *Petroleum*

and Petroleum Products, Calif. to Ariz., 241 I. C. C. 21, 42, for example, the Commission said:

> "The inherent transportation advantage possessed by the rail carriers in transporting petroleum and petroleum products from California to Arizona is the relatively low cost of rail service. The element of cost is not the only factor to be considered in determining the reasonableness of the rate to be charged, but it may become the dominant factor where two different modes of transportation are competing for the same traffic. In such a case the other factors which influence the fixing of rates such as volume of movement, value of service to the shipper, and the value of the commodity carried are of less importance."

There is every reason to believe that the Commission would have considered costs of the same significance in this case had it felt that it was not under the compulsion of congressional policy to give the barge lines an arbitrary rate advantage.

It is not essential to the maintenance of appellants' contentions that there be an affirmative finding of lower all-rail costs as compared to barge-rail costs. From a legal standpoint, the finding that there are no demonstrable economies in barge-rail service to justify the differentials is the equivalent of such a finding.

The basic fallacy of appellees' contention is an assumption that the Commission has a purely discretionary power and that the burden is on appellants to show that anything the Commission might pick out of the air is unreasonable, but there is no such burden on appellants. It is well established that, when the Commission exercises a power such as is conferred by section 307(d), its findings must affirmatively indicate that there is a rational basis in fact for its order. Certainly, a finding that there are no demonstrable economies in the barge-rail service

cannot in any way be viewed as a rational basis for the prescription of differentials.

Furthermore, the fact that the Commission said that to find that appellants had the inherent advantage of lower cost of service would be "tantamount to the abrogation of the express policy of Congress" (R. 42) is in itself an error of law sufficient to vitiate the order.*

V.

Willingness of the Barge Lines to Bear the Burden of the Differentials Does Not Constitute Justification for Them.

Appellees continue to suggest that the barge lines are willing to bear the burden of the differential and do not seek to impose it on the rail lines, as if this in some way constituted justification for the differentials. This is another variation on the value of service theme, which, as has already been shown, in and of itself does not constitute justification for the establishment of differentials.

The willingness of one carrier to accept less for its

* The statement in the brief for the United States and the Commission (p. 13) that "the Commission rejected the cost studies" of appellants is, of course, wholly erroneous. The Commission declined to make a finding as to relative all-rail and barge-rail costs in the period 1933-38 but did not reject the cost studies.

The statement (brief, p. 32) that the "Commission carefully preserved to the connecting rail carriers the division received by them for the corresponding portion of all-rail service" is likewise without support in the Commission's findings. The point is relatively unimportant because appellants are willing to have the case decided on the assumption that the rail carriers will receive the equivalent of all-rail divisions, but appellants cannot let such a statement pass unchallenged. The proposals of the barge lines were based on this theory and contained what the Commission referred to as a "requirement that the barge line absorb the differential." (R. 44.) This case, however, did not involve divisions, and there is nothing in the Commission's findings to show that the Commission designed the rates to give the rail carriers substantially the same division as they receive from corresponding all-rail routes. A similar statement appears on page 40 of the brief.

service than another carrier is willing to accept for a more desirable sevice may justify the establishment by the former of a lower rate provided it is just and reasonable. It cannot, however, under the national transportation policy justify taking from a more efficient carrier with a superior service the right to meet the rates of the inferior service if it desires to do so. The fallacies of this argument were fully explored in appellants' brief, pages 51-56.

In a footnote on page 43 of the brief for the United States and the Commission, it is said:

> "As an abstract proposition, it might seem anomalous for a carrier to complain of a competitor's willingness to accept a lower rate which does not compensate the latter for its operating costs."

Such a situation is neither abstract nor anomalous. It is the concrete situation with which appellants are confronted in this case.

VI.

Appellants, as Parties Subject to the Order and as Competitors of the Barge Lines, Have the Legal Interest Necessary to Entitle Them to Challenge the Order.

The barge-line appellees, in their brief in this Court, raise for the first time the question whether appellants have the right to seek judicial review of the order. Their argument in this respect is based upon a misconception of appellants' position and upon several cases, none of which is authority for their contention here. In fact, the cases cited do not bear sufficient resemblance to the case now before the Court to make worth-while a discussion of those cases. None of the cases cited is authority for the proposition that parties subject to an order may be denied judicial review of the order. None of them is authority for the proposition that carriers having a direct and vital

interest in the transportation situation which the order of the Commission affects may be denied judicial review of the unlawful order.

On the contrary, it is well established that appellants are entitled to judicial review of this order because they are parties to it and because they have a direct interest in the transportation situation affected by the order. *Chicago Junction Case*, 264 U. S. 258; *Alton R. Co.* v. *United States*, 315 U. S. 15. See also *Stark* v. *Wickard*, 321 U. S. 288; *Columbia System* v. *United States*, 316 U. S. 407; *Youngstown Co.* v. *United States*, 295 U. S. 476; *Western Pacific* v. *Southern Pacific Co.*, 284 U. S. 47.

It would be strange indeed if parties subject to an order could not challenge its valiidty. The barge-line appellees say that appellants do not complain as parties to the order (Br. 22) but this is incorrect. Appellants complain very strenuously as parties subject to this order. Appellees seem to forget that, as competitors of the barge lines, appellants are prevented by the order from meeting their competition.

Consider the illustration shown in footnote 10 on page 27 of the barge-line appellees' brief. In the particular illustration shown, the Wabash does not complain nor does the Illinois Central or Gulf, Mobile & Ohio complain, "as a connection forced into a joint arrangement with the barge lines against its desire to have *only* railroad connections." They do complain, however, as connections forced into a joint arrangement with barge lines while they are required to maintain higher all-rail rates between New Orleans and Chicago not only over their own rails direct but over their joint all-rail routes with each other and with other rail carriers.*

* Traffic moving direct over the Illinois Central between New Orleans and Chicago would not move through St. Louis. See, for example, the illustration shown in appellants' brief, p. 52. The principle, however, is the same.

Both the Illinois Central and the Gulf, Mobile & Ohio may handle traffic direct over their own rails from New Orleans to Chicago. The Illinois Central may also handle traffic from New Orleans to St. Louis, and there deliver it to the Gulf, Mobile & Ohio to be moved to Chicago. Likewise, the Gulf, Mobile and Ohio may handle traffic from New Orleans to St. Louis, and there deliver it to the Illinois Central for movement to Chicago. Appellees also neglect to mention that the Missouri Pacific operates between St. Louis and New Orleans although it does not reach Chicago. Yet, the Missouri Pacific, along with the other rail carriers, is required to maintain over its route in connection with the Illinois Central, Gulf, Mobile & Ohio, and Wabash joint all-rail rates higher than those in effect over the barge-rail routes. It is, thus, in every respect a party subject to this order. It cannot be reasonably contended that in such circumstances these carriers do not have a sufficient standing to challege the validity of the order. Such a rule would bar review of practically all Interstate Commerce Commission orders.

The interest of appellants is not remote and speculative but direct and substantial. Appellants "clearly have a stake as carriers in the transportation situation which the order of the Commission affected," *Alton R. Co.* v. *United States*, 315 U. S. 15, 19, and they clearly are entitled to maintain their claim to equality of treatment with their competitors.

In the *Chicago Junction Case*, 264 U. S. 258, 266-8, this Court said:

> "If, as suggested in *Interstate Commerce Commission* v. *Chicago, Rock Island & Pacific Ry. Co.*, 218 U. S. 88, 109, a legal interest exists where carriers' revenues may be affected, there is clearly such an interest here.
>
> "This loss is not the incident of more effective

competition. Compare *Edward Hines Trustees* v. *United States*, 263 U. S. 143, 148. It is injury inflicted by denying to the plaintiffs equality of treatment. To such treatment carriers are under the Interstate Commerce Act, as fully entitled as any shipper. * * *

"The plaintiffs may challenge the order because they are parties to it. The Judicial Code, § 212 (originally the Commerce Court Act, June 18, 1910, c. 309, 36 Stat. 542) declares that any party to a proceeding before the Commission may, as of right, become a party to 'any suit wherein is involved the validity of such order.' The section does not in terms provide that such party may institute a suit to challenge the order. But this is implied. For, otherwise, there would in some cases be no redress for the injury inflicted by an illegal order."

There can be no question but what appellants have the necessary legal interest to entitle them to challenge the validity of the Commission's order.

Conclusion.

For the reasons stated in appellants' brief and this reply brief, the judgment of the District Court should be reversed and the cause remanded to that Court with directions to set aside the order of the Interstate Commerce Commission and remand the cause to that Commission for further proceedings in conformity with the opinion of this Court.

Respectfully submitted,

HAROLD E. SPENCER,
ROBERT H. BIERMA,
HARRY E. BOE,
CHARLES CLARK,
FRANK H. COLE, JR.,
LEO P. DAY,
JAMES A. GILLEN,
ROLAND J. LEHMAN,
Y. D. LOTT, JR.,
DAVID O. MATHEWS,
JOHN E. MCCULLOUGH,
TOLL R. WARE.
Counsel for Appellants.

135 East Eleventh Place,
Chicago 5, Illinois.